(2)

Supreme Court, U.S.
FILED
MAR 7 1995
OFFICE OF THE CLERK

No. 94-1102

In the Supreme Court of the United States

OCTOBER TERM, 1994

PAUL E. SPRAGENS, PETITIONER

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

WILLIAM KANTER
ALFRED MOLLIN
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

BEST AVAILABLE COPY

20 pp

QUESTION PRESENTED

Whether 42 U.S.C. 423(d)(4) and implementing regulations, which allow blind people to earn more money than may be earned by other claimants without becoming ineligible for disability benefits, comport with equal protection as applied to petitioner, a sighted person.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	6
Conclusion	16

TABLE OF AUTHORITIES

Cases:

Alexander v. *Choate*, 469 U.S. 287 (1985)	15
Califano v. *Aznavorian*, 439 U.S. 170 (1978)	10
Cleburne v. *Cleburne Living Center, Inc.*, 473 U.S. 432 (1985)	4, 7, 13
Contractors Ass'n of Eastern Pennsylvania, Inc. v. *City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993)	14
Dandridge v. *Williams*, 397 U.S. 471 (1970)	10
FCC v. *Beach Communications, Inc.*, 113 S. Ct. 2096 (1993)	9
Heller v. *Doe by Doe*, 113 S. Ct. 2637 (1993)	7, 9, 12
High Tech Gays v. *Defense Indus. Security Clearance Office*, 895 F.2d 563 (9th Cir. 1990)	8
Lebron v. *National Railroad Passenger Corp.*, No. 93-1525 (Feb. 21, 1995)	12
Martin v. *Voinovich*, 840 F. Supp. 1175 (S.D. Ohio 1993)	14
More v. *Farrier*, 984 F.2d 269 (8th Cir.), cert. denied, 114 S. Ct. 74 (1993)	14
Nyquist v. *Mauclet*, 432 U.S. 1 (1977)	16
Pruitt v. *Cheney*, 963 F.2d 1160 (9th Cir.), cert. denied, 113 S. Ct. 655 (1992)	8
Schweiker v. *Wilson*, 450 U.S. 221 (1981)	7-8, 9
Sullivan v. *Everhart*, 494 U.S. 83 (1990)	4
United States Railroad Retirement Bd. v. *Fritz*, 449 U.S. 166 (1980)	9

Cases—Continued: Page

Weinberger v. *Salfi*, 422 U.S. 749 (1975) 10

Constitution, statutes and regulations::

U.S. Const.:
Amend. V (Due Process Clause) 4
Amend. XIV 14
§ 5 ..... 14, 15
Americans With Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* 12
42 U.S.C. 12101(a) (Supp. V 1993) 15
42 U.S.C. 12101(a)(7) (Supp. V 1993) 12, 13
42 U.S.C. 12131 *et seq.* (Supp. V 1993) 14
Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.* 15
Social Security Act, 42 U.S.C. 401 *et seq.*:
42 U.S.C. 403(f)(8) 2, 3
42 U.S.C. 405(g) 4
42 U.S.C. 416(*l*) 3
42 U.S.C. 423(a) 2
42 U.S.C. 423(d)(1)(A) 2
42 U.S.C. 423(d)(4) 2, 4, 5, 6, 8, 9, 10, 12
20 C.F.R.:
Section 404.430 3
Section 404.430(d) 3
Section 404.430(d)(ix) 3
Section 404.506 4
Section 404.1574(b)(2)(vi) 2
Section 404.1574(b)(2)(vii) 3
Section 404.1584(d) 3

Miscellaneous:

123 Cong. Rec. (1977):
p. 4816 10
p. 37,139 10
p. 37,140 11
p. 39,032 ..... 3, 11
R. Stern, E. Gressman, S. Shapiro & K. Geller, *Supreme Court Practice* (7th ed. 1993) 14

In the Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-1102

PAUL E. SPRAGENS, PETITIONER

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 36 F.3d 947. The opinion of the district court (Pet. App. 9a-22a) is reported at 808 F. Supp. 1537.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1994. The petition for a writ of certiorari was filed on December 21, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Social Security Act provides insurance benefits for people who cannot engage in substantial gainful activity because of a physical or mental disability. 42 U.S.C. 423(a). One requirement for eligibility under the Act is thus the "inability to engage in any substantial gainful activity." 42 U.S.C. 423(d)(1)(A). The Act authorizes the Secretary of Health and Human Services (the Secretary) to "prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity." 42 U.S.C. 423(d)(4). Pursuant to that authority, the Secretary provided by regulation that, for calendar years 1979 through 1989, if a claimant earned more than $300 per month after deductions for relevant expenses, the claimant was presumed to have engaged in substantial gainful activity and therefore to be ineligible for disability benefits. 20 C.F.R. 404.1574(b)(2)(vi).

The Act contains a special provision, however, concerning the amount that blind people may earn before being presumed to have engaged in substantial gainful activity (42 U.S.C. 423(d)(4)):

> No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 403(f)(8) of this title, which is applicable to individuals described in subparagraph (D) thereof.

The referenced provision, 42 U.S.C. 403(f)(8), prescribes the monthly earnings test for a retired person aged 65-69. The legislative history of the earnings provision for the blind in Section 423(d)(4) indicates that its purpose

was to increase the amount that blind people could earn and still remain eligible for disability benefits by applying the "liberalized retirement test" to them. 123 Cong. Rec. 39,032 (1977). For 1986, the "exempt amount" for purposes of Section 423(d)(4) was set by regulation at $650 per month. 20 C.F.R. 404.430(d)(ix).

Thus, in 1986, blind claimants could earn up to $650 per month, whereas sighted claimants could earn only up to $300 per month, and remain eligible for disability benefits. See 42 U.S.C. 403(f)(8), 416(*l*); 20 C.F.R. 404.430, 404.1584(d).[1]

b. Petitioner suffers from arthrogryposis, a deformity of the joints. Pet. App. 1a, 9a. He cannot use his arms, has only limited use of his legs, and must use a motorized wheel chair. *Id.* at 1a n.1, 9a. He has, however, learned to type with his feet and uses that ability to work as a free-lance book indexer. See *ibid.*

Petitioner became eligible for disability benefits in 1976. Pet. App. 10a. In 1988, after a periodic review, the Secretary determined that, beginning in 1986, petitioner's average monthly income exceeded $300. Under the Secretary's regulations, therefore, petitioner had been engaging in substantial gainful activity for about two years. In an initial decision and on reconsideration, the Secretary terminated petitioner's benefits and determined that an overpayment of approximately $19,000 (for some prior months) had been made. *Id.* at 1a-2a.

Petitioner took an administrative appeal. In that appeal, he did not argue that the Secretary misapplied or misinterpreted the applicable statutory and regulatory provisions. Nor did he dispute that, under those provisions, he became ineligible for benefits in 1986. His

---

[1] Those amounts have been increased for later calendar years. See 20 C.F.R. 404.430(d); 20 C.F.R. 404.1574(b)(2)(vii).

sole contention was that the statutory and regulatory earnings provisions for the blind in 42 U.S.C. 423(d)(4) and implementing regulations are unconstitutional. An administrative law judge (ALJ) declined to address petitioner's constitutional argument and upheld the Secretary's initial and reconsidered determination. The Appeals Council within the Social Security Administration affirmed the ALJ's decision, making that decision the final decision of the Secretary on petitioner's claim. Pet. App. 2a.[2]

2. Petitioner then brought this action in the United States District Court for the Northern District of Wyoming, seeking review of the Secretary's decision. See 42 U.S.C. 405(g). On the government's motion to affirm the Secretary's decision and petitioner's motion for summary judgment, the court held that, as applied to petitioner, 42 U.S.C. 423(d)(4) violates the equal protection component of the Due Process Clause of the Fifth Amendment. See Pet. App. 21a. The district court first determined, relying primarily upon *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), that

---

[2] The Secretary's regulations provide for a waiver of the recovery of any overpayment if the individual receiving the overpayment is without fault and if, among other things, recovery would deprive a person of income required for living expenses. See 20 C.F.R. 404.506; see also *Sullivan* v. *Everhart*, 494 U.S. 83, 86 (1990). Petitioner could have sought a waiver of recovery of the $19,000 overpayment in his administrative appeal. Moreover, petitioner was aware of the waiver procedure; he told the ALJ: "[I]f we leave the overpayment issue unresolved, then there's more at stake in my constitutional challenge and a judge may be more willing to listen to it since it not only involves my right to continue receiving benefits but also involves $19,000 in alleged overpayment." C.A. App. 66. He then stated that he did not wish a ruling on the waiver-of-recovery issue at that time. *Ibid.*

the provision was subject to "a more substantial" standard of review than the usual "rational basis" standard, because "[t]he disabled are a sensitive class, and are often discriminated against." Pet. App. 16a.

Applying that standard, the district court rejected the government's argument that the earnings provision for the blind is justified by Congress's determination that the blind, as a class, suffer greater financial problems in seeking permanent employment than do people with other disabilities. Pet. App. 17a-18a. The court recognized that the legislative history of the provision reflected such a determination. *Id.* at 17a-19a & n.10. But the court disagreed with that determination, at least on the facts of this case, stating: "[T]he Court does not believe that a blind person suffers greater ongoing financial problems in securing permanent employment than a person such as [petitioner]." *Id.* at 19a (emphasis omitted).

In addition to declaring 42 U.S.C. 423(d)(4) unconstitutional, the district court ordered the Social Security Administration to "reinstate [petitioner's] eligibility to receive disability benefits" and to pay him "all disability benefits for the period that he was deemed to be ineligible because he was engaged in substantial gainful activity." Pet. App. 21a.[3]

3. The court of appeals reversed the district court's award of summary judgment for petitioner on his

---

[3] Although the district court sustained petitioner's equal protection challenge, it granted the government's motion to affirm the Secretary's decision. Pet. App. 14a, 21a. The affirmance reflected the court's determination that, without regard to petitioner's constitutional challenge, "there is substantial evidence in the record to support the administrative finding that [petitioner] was engaged in substantial gainful activity" under the relevant statutory and regulatory provisions. *Id.* at 13a.

constitutional claim. Pet. App. 1a-8a. The court of appeals held, first, that "the 'rational basis' test is the proper standard of review," and not the "more exacting standard" used by the district court. *Id.* at 5a. The court of appeals explained that "a classification applying to blind persons is not suspect, or even quasi-suspect." *Id.* at 6a.[4] The court further held that Section 423(d)(4) and its implementing regulations have a rational basis (Pet. App. 6a (citation omitted)):

> [I]t is reasonable to conclude that blind persons are in a less favorable position than others who, though suffering from disabilities, nonetheless still have their eyesight. And the fact, if it is a fact, that [petitioner] may have "more disability" than *some* blind persons does not change the result. A classification scheme of this sort does not have to be perfect.

ARGUMENT

The court of appeals correctly rejected petitioner's equal protection challenge to the statutory and regulatory provisions that allow blind people to earn more money without becoming ineligible for disability benefits than other claimants are allowed to earn. This Court's decisions make clear that the rational basis standard is the appropriate standard for judicial review of a federal statute dispensing benefits among the disabled. The court of appeals also correctly held that the provisions at issue here have a rational basis. Those holdings do not conflict with any decision of this Court

---

[4] The court of appeals added that the standard of review "may be academic in a sense, since, regardless of the standard used, the result in the instant case would, in [its] view, be the same." Pet. App. 6a.

or another court of appeals. Further review is therefore unwarranted.

1. Petitioner contends that *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), requires something "beyond ordinary rational basis review" of the earnings provision for the blind. Pet. 11. The court of appeals correctly rejected that contention. See Pet. App. 5a-6a.

In *Cleburne*, this Court held that the court of appeals in that case had erred by applying "a more exacting standard of judicial review than is normally accorded economic and social legislation" to a local zoning ordinance that required group homes for the mentally retarded to obtain special use permits. 473 U.S. at 442. The Court determined that mental retardation is not a suspect or quasi-suspect classification. *Id.* at 442-447. Based on that determination, the Court concluded that "[t]o withstand equal protection review, legislation that distinguishes between the mentally retarded and others must be rationally related to a legitimate governmental purpose." *Id.* at 446.

Heller v. *Doe by Doe*, 113 S. Ct. 2637 (1993), defeats petitioner's contention that *Cleburne* supports the application of something "beyond ordinary rational basis review" (Pet. 11) in this case. *Heller* concerned an equal protection challenge to state involuntary commitment statutes that treated the mentally retarded differently from the mentally ill. 113 S. Ct. at 2640-2641. In discussing the appropriate standard of review, the Court stated (*id.* at 2643):

> We have applied rational-basis review in previous cases involving the mentally retarded and the mentally ill. See *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) * * *; *Schweiker* v.

> *Wilson*, [450 U.S. 221 (1981)]. In neither case did we purport to apply a different standard of rational-basis review from [the traditional deferential test] just described.

It is especially clear from *Heller*'s citation to *Schweiker* v. *Wilson* that the traditional rational basis standard applies to a federal statute, such as 42 U.S.C. 423(d)(4), that distributes welfare benefits among non-suspect classes of the needy. See *Wilson*, 450 U.S. at 222, 230-239 (applying traditional rational basis standard to uphold provision that withholds Supplemental Security Income benefits from otherwise eligible individuals aged 21 through 64 in public mental institutions that do not receive Medicaid funds for the individuals' care).

Heller also defeats petitioner's contention (Pet. 11) that further review is warranted to resolve divisions among the lower federal courts regarding the standard applied in *Cleburne*. Petitioner cites decisions from only one court of appeals that have read *Cleburne* to require greater scrutiny than normally accorded under rational basis review. See Pet. 12 (citing *Pruitt* v. *Cheney*, 963 F.2d 1160 (9th Cir.), cert. denied, 113 S. Ct. 655 (1992), and *High Tech Gays* v. *Defense Indus. Security Clearance Office*, 895 F.2d 563 (9th Cir. 1990)). Those decisions, however, pre-date *Heller*. Moreover, none of them concerns a federal statute, such as Section 423(d)(4), that does not discriminate against the disabled but instead distributes welfare benefits among categories of disabled persons in proportion to Congress's reasonable determination regarding their relative needs.[5]

---

[5] Petitioner also cites decisions in which other courts of appeals have "assum[ed] arguendo that heightened scrutiny applies" to legislative classifications based on disability. Pet. 12. Those deci-

Thus, the court of appeals in this case correctly held that Section 423(d)(4) and its implementing regulations must be upheld "if there is 'any reasonably conceivable state of facts that could provide a rational basis for the classification.'" Pet. App. 6a n.3 (quoting *FCC* v. *Beach Communications, Inc.*, 113 S. Ct. 2096, 2101 (1993)); accord *Heller*, 113 S. Ct. at 2642-2643 (quoting *Beach Communications*).

2. The court of appeals, applying the foregoing standard, correctly held that Section 423(d)(4) and its implementing regulations have a rational basis and therefore do not violate equal protection. See Pet. App. 6a-8a. Petitioner's contrary claim (Pet. 14-20) is without merit.

As an initial matter, petitioner errs in asserting (Pet. 16-17) that the statute and regulations fail the rational basis test because petitioner suffers a degree of disability comparable to that caused by blindness. A federal statute providing for the payment of government benefits "inevitably involves the kind of line-drawing that will leave some comparably needy person outside the favored circle." *Schweiker* v. *Wilson*, 450 U.S. at 238.[6] Such a statute is not irrational merely because the line "is not made with mathematical nicety or because in

---

sions also pre-date *Heller* and, in any event, do not conflict with the decision below.

[6] See also *Beach Communications*, 113 S. Ct. at 2102 ("Defining the class of persons subject to a regulatory requirement—much like classifying government beneficiaries—'inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.'") (quoting *United States Railroad Retirement Bd.* v. *Fritz*, 449 U.S. 166, 179 (1980)).

practice it results in some inequality." *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). In particular, rational basis review provides "no basis for [a court's] requiring individualized determinations [of neediness] when Congress can rationally conclude * * * that generalized rules are appropriate to its purposes and concerns." *Weinberger* v. *Salfi*, 422 U.S. 749, 785 (1975); see also *Califano* v. *Aznavorian*, 439 U.S. 170, 177-178 (1978).[7]

The legislative history of the earnings provision for the blind in Section 423(d)(4) shows that Congress considered blindness to be "a distinct and unique condition." 123 Cong. Rec. 37,139 (1977) (statement of Sen. Bayh). In arguing for passage of a special earnings provision for the blind, Senator Bayh explained (*ibid.*):

> The blind, as a group, suffer largely artificial impediments when they seek to enter and compete in the labor market. The economic penalties exacted by discrimination are evident in a dramatic 70 percent rate of unemployment and underemployment. Any group with such a high rate merits being singled out for compensatory help, for particular assistance to meet their problems.

In addition, Senator Humphrey observed that the bill provided "reasonable exceptions to redress handicaps and disadvantages imposed by social and economic barriers that have barred the blind, far more than their disability,

---

[7] Petitioner thus errs in contending that the court of appeals "erred by disposing of petitioner's challenge as if it were a facial rather than an as applied challenge." Pet. 16. Rational basis challenges, as applied, do not require a court to consider whether a classification is rational in light of a particular individual's circumstances; it is the rationality of the distinction between categories that is important.

from earning a decent and secure livelihood." *Id.* at 37,140.[8] Representative Bingham stated that "concerned members of the House [believed that] blind persons experience greater ongoing financial problems in seeking permanent employment than other disabled individuals, which require special consideration." *Id.* at 39,032.

Congress could reasonably determine that the blind, as a group, suffer greater financial hardships because of their blindness than do people with other disabilities, as a group. Blindness poses a unique challenge to obtaining gainful employment, because vision is commonly regarded as central to the ability to: (1) perform physical labor that requires hand-to-eye coordination, (2) navigate to and from places of employment, and (3) process information, which is delivered, in our society, overwhelmingly through the printed word or visual images.

It is, of course, true that many blind people are successful in the job market, as in all other areas of society. It is also true that another disability might, in a particular case, pose challenges to engaging in gainful employment that are comparable to those posed by blindness. Neither fact, however, provides a basis for striking down the statutory provisions and regulations at issue under the rational basis test.[9]

---

[8] Senator Humphrey also noted that the "unemployment rate of 70 percent * * * is related more directly to social attitudes and discrimination than to incapacity." 123 Cong. Rec. 37,140 (1977). And Senator Bayh noted studies showing a "dramatic" rate of unemployment and underemployment among the blind attributable to the "substantial and overwhelming economic disadvantages" the blind must face. *Id.* at 4816.

[9] In any event, the court of appeals correctly held that the earnings provisions for the blind would be constitutional even under more exacting scrutiny. Pet. App. 6a. That holding, of

3. In this Court, petitioner argues that heightened scrutiny of the earnings provisions for the blind in 42 U.S.C. 423(d)(4) and implementing regulations is required by the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* That argument is not properly presented in this Court, because it was not presented in the courts below. In any event, the argument is without merit.

Petitioner did not argue in the courts below that heightened scrutiny was required by the ADA; he relied solely on *Cleburne*. See, *e.g.*, Pet. C.A. Br. 13 ("'*Cleburne*' Equal Protection analysis applies to Paul Spragens."). He cited the ADA only as support for what he regarded as a more exacting rational basis standard adopted in *Cleburne*. See *id.* at 15 ("In light of the ADA, to apply any rational basis reasoning other than the one explained in *Cleburne* and its progeny to Mr. Spragens would be illogical."). In *Heller*, this Court held that, when a "heightened scrutiny argument [is pressed] for the first time [in this Court]," it would be "inappropriate," as well as "imprudent and unfair," to consider that question for the first time in this Court. 113 S. Ct. at 2642. That holding fully applies here.[10]

---

course, weighs against further review of the issue of the proper level of scrutiny.

[10] This Court's recent decision in *Lebron* v. *National Railroad Passenger Corp.*, No. 93-1525 (Feb. 21, 1995), is not to the contrary. In *Lebron*, the Court exercised its discretion to address an argument that had not been raised in the courts below, because the argument concerned an issue that was logically prior to the issue presented by an argument that had been raised in the lower courts, and because resolution of the two arguments involved overlapping considerations. *Lebron*, slip op. 7. Neither circumstance obtains with respect to petitioner's ADA-based argument. That argument need not be resolved in order to address peti-

Petitioner's ADA argument relies on the following statement in *Cleburne*, 473 U.S. at 439-440 (emphasis added):

> Section 5 of the [Fourteenth] Amendment empowers Congress to enforce th[e] [equal protection] mandate [of that Amendment], but *absent controlling congressional direction*, the courts have themselves devised standards for determining the validity of state legislation or other official action that is challenged as denying equal protection. The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.

Petitioner asserts that the findings in the ADA regarding discrimination against the disabled furnish "the 'controlling congressional direction' that was missing in *Cleburne*." Pet. 9. Petitioner argues that, "[b]ecause the ADA was expressly enacted pursuant to Congress's power under Section 5 of the Fourteenth Amendment, * * * the ADA should be seen as a directive to the judiciary to apply heightened scrutiny to laws that differentially treat the disabled." Pet. 8-9.

Even assuming petitioner's argument were properly before the Court, it does not warrant further review in this case, for several reasons. First, the provision in the ADA upon which petitioner relies (Pet. 8) merely sets forth several of the findings upon which the Act was based. See 42 U.S.C. 12101(a)(7) (Supp. V 1993). The provision does not, on its face, direct courts to do anything. Accordingly, the two courts of appeals that have

---

tioner's *Cleburne* argument, and resolution of the two arguments involves quite different considerations.

considered the issue have held that the ADA does not "alter the standard [of review] of constitutional equal protection claims." *More* v. *Farrier*, 984 F.2d 269, 271 n.4 (8th Cir.), cert. denied, 114 S. Ct. 74 (1993); see *Contractors Ass'n of Eastern Pennsylvania, Inc.* v. *City of Philadelphia*, 6 F.3d 990 (3d Cir. 1993).[11] In the absence of a circuit conflict and of a proper airing of the issue below, this case provides no occasion for further review of petitioner's argument.

Second, petitioner errs in asserting (Pet. 8) that Congress's power under Section 5 of the Fourteenth Amendment provides a basis for applying heightened scrutiny in this case. This case concerns a *federal* statute and regulations; the equal protection mandate of the Fourteenth Amendment, however, is directed to the *States*. Moreover, the substantive provisions of the ADA do not apply to the administration of the Social Security disability program. Compare 42 U.S.C. 12131 *et seq.* (prohibiting discrimination in state and local programs). There accordingly is no basis for relying on a prefatory congressional finding in the ADA in order to subject distinctions drawn in the federally administered Social Security disability program to a different standard of judicial review than would have applied in the absence of the ADA. There is, in other words, no basis for concluding that Congress, in enacting the ADA, intended to call into question the myriad judgments and dis-

---

[11] Petitioner cites one district court decision holding that the ADA requires heightened scrutiny of classifications based on disability. Pet. 10 (citing *Martin* v. *Voinovich*, 840 F. Supp. 1175, 1210 (S.D. Ohio 1993)). However, this "Court will not grant certiorari to review a decision of a federal court of appeals merely because it is in direct conflict on a point of federal law with a decision rendered by a district court." R. Stern, E. Gressman, S. Shapiro & K. Geller, *Supreme Court Practice* 178 (7th ed. 1993).

tinctions that have long been made regarding various impairments under the Social Security disability program, cf. *Alexander* v. *Choate*, 469 U.S. 287, 307 (1985)—much less to authorize the federal courts to hold a provision of the Social Security Act unconstitutional.

Congress presumably would have authority under provisions of the Constitution other than Section 5 of the Fourteenth Amendment to enact legislation requiring the federal courts to subject features of federal benefit programs to some sort of exacting judicial review. Cf. Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.* But, contrary to petitioner's suggestion, the question whether Congress has actually exercised such authority in the ADA is quite distinct from the question whether Congress has exercised its authority under Section 5 to subject state and local statutory provisions to more exacting judicial scrutiny than would otherwise apply.

Finally, the ADA findings upon which petitioner relies are not relevant to the classifications of relative need that are at issue here. The ADA findings detail the ways in which disabled people, as a class, are treated less favorably in the work force than people without disabilities. See 42 U.S.C. 12101(a) (Supp. V 1993). The provisions of the Social Security Act and implementing regulations at issue here do not treat disabled people less favorably than non-disabled people. Indeed, the purpose of the disability program as a whole is to provide benefits to people with disabilities that prevent them from engaging in substantial gainful employment. The provisions petitioner challenges accomplish that purpose by making a distinction *within* the class of disabled persons who apply for benefits. That distinction reflects Con-

gress's reasonable determination of where the greatest need lies, rather than any invidious discrimination.[12]

Similar distinctions are made in every social welfare program. If Congress had intended in the ADA to subject that sort of distinction to heightened scrutiny, it would have made that intention unmistakably plain in the text of the ADA. In the absence of such an expression of intent, the court of appeals applied the proper standard of review to the provisions at issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

WILLIAM KANTER
ALFRED MOLLIN
Attorneys

MARCH 1995

---

[12] Petitioner cites decisions of this Court that, he contends, applied strict scrutiny to classifications that divided the suspect class "into two subgroups." Those decisions, however, concern circumstances where only part of a suspect class is disadvantaged compared to the nonsuspect class. *Nyquist* v. *Mauclet*, 432 U.S. 1 (1977), for example, concerned the denial of state financial assistance to certain resident aliens. Such cases are inapposite here, because the class assertedly entitled to heightened scrutiny (people with disabilities that preclude substantial gainful employment) is treated favorably compared to those outside the class.